

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

EVERETT L. SPILLARD, II,

Plaintiff,

v.

COSTA, et al.,

Defendants.

No. 2:20-cv-702 CKD P

ORDER

Plaintiff is a state prisoner proceeding pro se and seeking relief pursuant to 42 U.S.C. § 1983. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1).

Plaintiff requests leave to proceed in forma pauperis. As plaintiff has submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a), his request will be granted. Plaintiff is required to pay the statutory filing fee of \$350.00 for this action. 28 U.S.C. §§ 1914(a), 1915(b)(1). By separate order, the court will direct the appropriate agency to collect the initial partial filing fee from plaintiff's trust account and forward it to the Clerk of the Court. Thereafter, plaintiff will be obligated for monthly payments of twenty percent of the preceding month's income credited to plaintiff's prison trust account. These payments will be forwarded by the appropriate agency to the Clerk of the Court each time the amount in plaintiff's account exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C. § 1915(b)(2).

1 Plaintiff has filed a motion seeking leave to amend his complaint. Good cause appearing,
2 and in the spirit of Federal Rule of Civil Procedure 15(a) which generally permits a plaintiff to
3 amend their pleadings once as a matter of course early in proceedings, plaintiff's motion will be
4 granted.

5 As to the contents of his amended complaint, plaintiff is informed that the court cannot
6 refer to a prior pleading in order to make plaintiff's amended complaint complete. Local Rule
7 220 requires that an amended complaint be complete in itself without reference to any prior
8 pleading. This is because, as a general rule, an amended complaint supersedes the original
9 complaint. See Loux v. Rhay, 375 F.2d 55, 57 (9th Cir. 1967). Once plaintiff files an amended
10 complaint, the original pleading no longer serves any function in the case. Therefore, in an
11 amended complaint, as in an original complaint, each claim and the involvement of each
12 defendant must be sufficiently alleged.

13 In accordance with the above, IT IS HEREBY ORDERED that:

14 1. Plaintiff's request for leave to proceed in forma pauperis (ECF No. 2) is granted.

15 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. All fees
16 shall be collected and paid in accordance with this court's order to the Director of the California
17 Department of Corrections and Rehabilitation filed concurrently herewith.

18 3. Plaintiff's motion for leave to file an amended complaint (ECF No. 4) is granted.

19 4. Plaintiff's complaint is dismissed.

20 5. Plaintiff is granted thirty days from the date of service of this order to file an amended
21 complaint that complies with the requirements of the Civil Rights Act, the Federal Rules of Civil
22 Procedure, and the Local Rules of Practice. The amended complaint must bear the docket
23 number assigned this case and must be labeled "Amended Complaint." Failure to file an

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amended complaint in accordance with this order will result in a recommendation that this action be dismissed.

Dated: December 29, 2020



CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE

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